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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/814,141	03/06/97	WOHLSTADLER	J 370208-6158

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EXAMINER
ACHUTAMURTHY, P

ART UNIT	PAPER NUMBER
1648	

DATE MAILED: 04/01/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/814,141

Applicant(s)
Wohlstadter et al

Examiner
P. Achutamurthy

Group Art Unit
1648



☐ Responsive to communication(s) filed on _____.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire ONE month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-7 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☐ Claim(s) _____ is/are rejected.

☐ Claim(s) _____ is/are objected to.

☒ Claims 1-7 are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1648

DETAILED ACTION

Election/Restriction

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1, 2 drawn to a method of conducting a plurality of electrochemiluminescent (ECL) assays , classified in class 436 , subclass 501, or 546, for example.
- II. Claim 3, drawn to an article comprising binding domains on a support, classified in class 436, subclass 518.
- III Claims 4-7, drawn to a cassette, classified in class 422, subclass 52 .

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the binding domains can be used in a binding assay using a method does not require an ECL method, such as "elisa"..

Inventions I and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP

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§ 806.05(h)). In the instant case the method of group I can be practiced with an apparatus having a system for ECL measurements which is not made in a cassette form. For example the binding domains on the support can be contacted with the reagents of a binding assay and ECL triggered by means of electrodes placed next to the sample followed by measurement of the ECL signal.

Inventions II and III are not related because the article of group II only requires support having binding domains but does not require that it also have electrodes as an integral part of its apparatus. The products of II and III do not share the same essential features and represent different articles of manufacture.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and/or because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

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Applicant is advised that a reply to this restriction and election requirement must be made within THIRTY (30) DAYS of the date of mailing of this action. See MPEP 809.02(a).

The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to **Group Art Unit 1648**.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to P. Achutamurthy whose telephone number is (703) 308-3804. The examiner can normally be reached on Monday-Thursday from 7:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald E. Adams, Ph.D., can be reached on (703) 308-0570. The fax phone number for this Group is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.


PONNATHAPURA ACHUTAMURTHY
PRIMARY EXAMINER
GROUP 1800

pa
March 1998